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International Covenant on Civil and Political Rights

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Human Rights Committee
Sixty-fifth session

Consideration of reports submitted by States parties under article 40 of the Covenant

Concluding observations of the Human Rights Committee

Chile

1. The Committee considered the fourth periodic report of Chile (CCPR/C/95/Add.11) at its 1733rd and 1734th meetings (CCPR/C/SR.1733–1734), held on 24 March 1999, and adopted the following concluding observations at its 1740th meeting (CCPR/C/SR.1740), held on 30 March 1999.

A. Introduction

2. The Committee welcomes the State party's comprehensive fourth periodic report, covering the important changes that have taken place in that country since 1990. The Committee takes note of the useful information contained in the report concerning draft legislative proposals. However, it regrets the lateness in the submission of the report and of the core document.

3. It appreciates the additional information provided by the delegation in its dialogue with the Committee.

B. Positive aspects

4. The Committee welcomes the progress made since considering the State party's third periodic report in re-establishing democracy in Chile after the military dictatorship, as well as the initiatives for reform of legislation that is incompatible with the State party's obligations under the Covenant.

5. The establishment of the National Women's Service (SERNAM) and of the National Commission for Family and the adoption of the Domestic Violence Act, the National Committee on Child Labour Eradication and the Judicial Academy are all positive developments.

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C. Factors and difficulties affecting implementation of the Covenant

6. The constitutional arrangements made as part of the political agreement that facilitated the transition from the military dictatorship to democracy hinder full implementation of the Covenant by the State party. While appreciating the political background and dimensions of these arrangements, the Committee stresses that internal political constraints cannot serve as a justification for non-compliance by the State party with its international obligations under the Covenant.

D. Principal areas of concern and recommendations

7. The Amnesty Decree Law, under which persons who committed offences between 11 September 1973 and 10 March 1978 are granted amnesty, prevents the State party from complying with its obligation under article 2, paragraph 3, to ensure an effective remedy to anyone whose rights and freedoms under the Covenant have been violated. The Committee reiterates the view expressed in its General Comment 20, that amnesty laws covering human rights violations are generally incompatible with the duty of the State party to investigate human rights violations, to guarantee freedom from such violations within its jurisdiction and to ensure that similar violations do not occur in the future.

8. The Committee is deeply concerned by the enclaves of power retained by members of the former military regime. The powers accorded to the Senate to block initiatives adopted by the Congress and the powers exercised by the National Security Council, which exists alongside the Government, are incompatible with article 25 of the Covenant. The composition of the Senate also impedes legal reforms that would enable the State party to comply more fully with its Covenant obligations.

9. The wide jurisdiction of the military courts to deal with all the cases involving prosecution of military personnel and their power to conclude cases that began in the civilian courts contribute to the impunity which such personnel enjoy against punishment for serious human rights violations. Furthermore, the continuing jurisdiction of Chilean military courts to try civilians does not comply with article 14 of the Covenant. Therefore:

> The Committee recommends that the law be amended so as to restrict the jurisdiction of the military courts to trial only of military personnel charged with offences of an exclusively military nature.

10. The Committee is deeply concerned by persistent complaints of torture and excessive use of force by police and other security personnel, some of which were confirmed in the State party's report, as well as by the lack of independent mechanisms to investigate such complaints. The sole possibility of resort to court action cannot serve as a substitute for such mechanisms. Therefore:

> The Committee recommends that the State party establish an independent body with authority to receive and investigate all complaints of excessive use of force and other abuses of power by the police and other security forces.

11. While the Committee welcomes the reform of the Criminal Procedure Code, it is deeply concerned that many of the provisions, some of which will strengthen compliance with the fair trial guarantees provided under article 14 of the Covenant, will not come into force for a long period of time. Therefore:

> The State party should consider shortening the period before the new Criminal Procedure Code comes into force in all parts of the country.

12. The law and practice of pre-trial detention, under which large numbers of persons accused of offences are held in preventive detention pending completion of the criminal process, raises issues of compliance with articles 9, paragraph 3, and 14, paragraph 2, of the Covenant. In this regard:

The Committee recommends that the law be amended immediately so as to ensure that pre-trial detention will be the exception and not the rule, and will be used only when necessary to protect compelling interests, such as public safety and ensuring the appearance of the accused at their trials.

13. The power to hold detainees incommunicado, while limited by recent legislative reforms, remains a matter of serious concern. Therefore:

The State party should reconsider its law on this issue with a view to eliminating incommunicado detention altogether.

14. The Committee is concerned by the conditions in Chilean prisons and places of detention and by reports of discrimination amongst inmates. Therefore:

The Committee recommends the establishment of institutionalized mechanisms for monitoring conditions in prisons, so as to ensure compliance with article 10 of the Covenant, and for investigating complaints by inmates.

15. The criminalization of all abortions, without exception, raises serious issues, especially in the light of unrefuted reports that many women undergo illegal abortions that pose a threat to their lives. The legal duty imposed upon health personnel to report on cases of women who have undergone abortions may inhibit women from seeking medical treatment, thereby endangering their lives. The State party is under a duty to take measures to ensure the right to life of all persons, including pregnant women whose pregnancies are terminated. In this regard:

The Committee recommends that the law be amended so as to introduce exceptions to the general prohibition of all abortions and to protect the confidentiality of medical information.

16. The Committee is seriously concerned by the existing legal provisions that discriminate against women in marriage. Legal reforms under which married couples may opt out of discriminatory provisions, such as the provisions regarding control over property and authority over children, do not abolish the discrimination in the primary legal arrangements, which may only be changed with the consent of the husband. Therefore:

All such legal provisions that discriminate between men and women must be abolished.

17. Lack of divorce under Chilean law may amount to a violation of article 23, paragraph 2, of the Covenant, according to which men and women of marriageable age have the right to marry and found a family. It leaves married women permanently subject to discriminatory property laws mentioned in paragraph 16 above, even when a marriage has broken down irretrievably.

18. The Committee is concerned that there are a large number of instances of sexual harassment in the workplace. Therefore:

The Committee recommends that a law be enacted making sexual harassment in the workplace an offence punishable by law.

19. The Committee is concerned that the participation of women in political life, public service and the judiciary is quite inadequate. Therefore:

The Committee recommends that steps be taken by the State party to improve the participation of women, if necessary, by adopting affirmative action programmes.

20. The continuation in force of legislation that criminalizes homosexual relations between consenting adults involves violation of the right to privacy protected under article 17 of the Covenant and may reinforce attitudes of discrimination between persons on the basis of sexual orientation. Therefore:

The law should be amended so as to abolish the crime of sodomy as between adults.

21. The minimum age for marriage, 12 years for girls and 14 years for boys, raises issues of compliance by the State party with its duty under article 24, paragraph 1, to offer protection to minors. Furthermore, marriage at such a young age would generally mean that the persons involved do not have the mental maturity to ensure that the marriage is entered into with free and full consent, as required under article 23, paragraph 3, of the Covenant. Therefore:

The State party should amend the law so as to introduce a uniform minimum age for marriage of males and females, which will ensure the maturity required in order for the marriage to comply with the requirements of article 23, paragraph 3, of the Covenant.

22. The Committee takes note of the various legislative and administrative measures taken to respect and ensure the rights of persons belonging to indigenous communities in Chile to enjoy their own culture. Nevertheless, the Committee is concerned by hydroelectric and other development projects that might affect the way of life and the rights of persons belonging to the Mapuche and other indigenous communities. Relocation and compensation may not be appropriate in order to comply with article 27 of the Covenant. Therefore:

When planning actions that affect members of indigenous communities, the State party must pay primary attention to the sustainability of the indigenous culture and way of life and to the participation of members of indigenous communities in decisions that affect them.

23. The Committee is concerned by the lack of comprehensive legislation that would prohibit discrimination in the public and private spheres, such as employment and housing. Under article 2, paragraph 3, and article 26 of the Covenant, the State party is under a duty to protect persons against such discrimination. Therefore:

Legislation should be enacted to prohibit discrimination and provide an effective remedy to those whose right not to be discriminated against is violated. The Committee also recommends the establishment of a national defender of human rights or other effective agency to monitor the implementation of anti-discrimination legislation.

24. The special status granted in public law to the Roman Catholic and Orthodox churches involves discrimination between persons on account of their religion and may impede freedom of religion. Therefore:

The State party should amend the law so as to give equal status to all religious communities that exist in Chile.

25. The general prohibition imposed on the right of civil servants to organize a trade union and bargain collectively, as well as their right to strike, raises serious concerns, under article 22 of the Covenant. Therefore:

The State party should review the relevant provisions of laws and decrees in order to guarantee to civil servants the rights to join trade unions and to bargain collectively, guaranteed under article 22 of the Covenant.

26. The Committee sets the date for the submission of Chile's fifth periodic report as ... It requests that the text of the State party's fourth periodic report and the present concluding observations be published and widely disseminated within Chile and that the next periodic report be disseminated among non-governmental organizations operating in Chile.